NOTES

WASHINGTON NOTES

THE SENATE MAXIMUM TARIFF
THE PROPOSED CHANGES IN CUSTOMS ADMINISTRATION
THE COMMODITIES CLAUSE DECISION

Senator Aldrich has completed the draft of the Senate Tariff Bill, reported on April 13, by laying before the Senate (April 30) an "amendment" designed to provide a maximum-tariff schedule, and another "amendment" designed to alter the provisions for customs administration. In originally reporting the tariff bill, the Finance Committee had simply stricken out all those portions of the Payne tariff subsequent to the schedules of the minimum duties themselves. The later parts of the Payne tariff included not only the maximum schedules and the redraft of the customs-administration sections, but also a number of ancillary provisions such as those relating to inheritance taxation and internal-revenue matters. The Senate Finance Committee may yet report sections dealing with some or all of these questions; but in so far as the tariff itself is concerned, the present amendments cover the ground. Since their introduction, they have already become the target for very serious criticism and attack.

The Aldrich maximum-tariff plan differs fundamentally from that of the Payne bill. Whereas the latter provided that the minimum rates should be the ones to go into effect at once, the maximum schedules to become operative automatically when it should appear that foreign countries had discriminated against the United States, the Aldrich tariff provides that the maximum rates shall be the duties which go into effect and shall be reduced only upon a proclamation by the President substituting the minimums for the maximums. Such a proclamation may be issued at any time when the President becomes satisfied that any given country imposes no export bounty or prohibition which unduly militates against the United States; accords to our products treatment which is "reciprocal" and "equivalent;" and imposes no restrictions or regulations upon trade with the United States which might legitimately be considered discriminatory. The actual rate imposed in the Aldrich

tariff is to be 25 per cent. *ad valorem* in excess of the minimum rates as fixed by the bill already presented. This should be compared with a provision in the Payne bill specifying that the maximum rates of that measure should be 20 per cent. of the minimum rates in addition to such minimum rate. Thus the Aldrich tariff would, in many cases, offer a maximum from two to five times as great as that of the maximum tariff under the Payne bill. On all of the lower-taxed commodities the rate would be very much heavier than in the Payne bill. Mr. Aldrich's maximum tariff, moreover, includes a very much larger range of commodities than did the Payne maximum schedule; and it also takes from the free list coffee and tea at 5 and 10 cents per pound respectively, subjecting these to duties whenever the maximum tariff is applied.

Not the least striking feature of the Aldrich maximum tariff is the provision with reference to the so-called Tariff Commission. Urgent demand has been made for some time past for the establishment of a "permanent tariff commission" to make investigations into rates of domestic duty, and also to inform the President when given countries had laid themselves liable to the rates of our maximum tariff. Senator Aldrich now recognizes this demand in the following cryptic words:

> To secure information to assist the President in the discharge of the duties imposed upon him by this section, and information which will be useful to Congress in tariff legislation and to the officers of the government in the administration of the customs laws, the President is hereby authorized to employ such persons as may be required to make thorough investigations and examinations into the production, commerce, and trade of the United States and foreign countries, and all conditions affecting the same.

This is interpreted to mean that the President may appoint such number of "persons" as he may deem best to aid him. These "persons" to be paid as he may deem best and to work as he may direct; though Congress would retain the privilege of throwing aside the results of the investigations or of disregarding them altogether. The so-called tariff-commission provision has tended somewhat to split the ranks of tariff-commission advocates, some of them professing moderate satisfaction with these clauses as being the best they can get, while others take the view that the provision in question does not sufficiently recognize the commission, gives too much power to the President, inadequately designates the duties of the commission, and grants no assurance of recognition or considera-

tion for what it may report. This difference of view has already appeared in a marked form, while the provision itself has been met with antagonism in the lower chamber on the ground that it unduly expands the powers of the President.

An important aspect of the maximum tariff is seen in the clauses which provide that the proclamation to be issued by the President may in accordance with the facts as ascertained by him

> extend to the whole of any foreign country or may be confined to or exclude from its effect any dependency, colony, or other political subdivision having authority to adopt and enforce tariff legislation, or to impose restrictions or regulations, or to grant concessions upon the exportation or importation of articles which are or may be imported into the United States.

This is intended to reach the so-called sanitary or hygienic regulations or restrictions of certain foreign countries which have been so employed as to operate against the trade of the United States—particularly that in meat products. Germany, for example, has an elaborate series of such rules which have long operated in certain cases as the equivalent of a prohibitive tariff. This subject was dealt with by the tariff commission which was sent to Germany some two and a half years ago, and again by the commission which went to France a year ago. In neither case did it prove possible to get a relaxation of the restrictions in question and the effort to see what can be done through retaliatory methods will now be made—should the Aldrich maximum be enacted.

The provisions for the administration of customs which have aroused most interest are found in the sections relating to the valuation of goods imported into the United States and to the establishment of a new so-called "Court of Customs Appeals." The amendment carrying the changes in customs administration recites the whole of the customs-administration act in its new form. The portion relating to valuation is found in sec. 11. This specifies that

> when the actual market value . . . . of any article of imported merchandise . . . . cannot be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States . . . . and in no case shall such merchandise be appraised upon original appraisal or reappraisement at less than the total cost of production as thus ascertained. The actual market value or wholesale price as

defined by law of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market. . . . .

This provision would do away with the so-called "export-price agreement" which formed an important part of the German commercial treaty and of the subsequent treaties dependent thereon. It would require the so-called "consigned goods having no home-market value" to submit to the payment of tariff duties on a basis of valuation variously estimated at from 20 to 40 per cent. higher than would otherwise have been established, or than is established upon current importations.

The proposed Court of Customs Appeals is provided for in sec. 29. This would establish a court consisting of five justices having jurisdiction of all cases appealed from the Board of General Appraisers. The Court of Customs Appeals and board would thus together exercise complete control of all customs cases affecting the classification of imported merchandise or the tariff duties imposed thereon. This would abrogate the jurisdiction of the United States Circuit Court of Appeals in customs cases although the act provides that in the event of any one or two judges of the Court of Customs Appeals being incapacitated, the President of the United States might designate any qualified United States Circuit or District judge to act in place of the judge unable to perform his duties on the Court of Customs Appeals. The proposed act also provides for appointing an Assistant Attorney-General, a Deputy Assistant Attorney-General, and four special attorneys to have charge of the interests of the government in all cases before the Court of Customs Appeals. It is obvious that this would result in establishing a very expensive mechanism for the management of customs matters, such mechanism (including the Court of Customs Appeals, the new tariff commission, the assistant and deputy assistant attorneys-general, etc.) being estimated to add probably $250,000 per annum to the cost of administration. The other features of the new provisions for customs administration are chiefly technical, although of some importance. Thus importers are given the right of correcting their invoices by deducting from

the stated value of goods; the present provision being that they may raise but not lower such stated values (sec. 7). A longer time for the taking of appeals from the decisions of the Board of General Appraisers is also granted (sec. 13). On the other hand, a number of points which have been urgently presented by importing interests are entirely disregarded. Thus no provision is made for allowing a margin for undervaluations without penalty.

The Supreme Court of the United States has at last handed down the long-delayed decision in the so-called "commodities clause" case, involving the constitutionality of that section of the Hepburn Railroad Rate Act (passed 1906) which forbade common carriers to own articles transported in interstate trade subsequent to May 1, 1908 (Supreme Court of the United States, October Term, 1908, Nos. 559–70, *the United States ex. rel. the Attorney-General of the United States, plaintiff in error vs. The Delaware & Hudson Co., etc., etc.,* May 3, 1909). The decision in substance is that while the law is constitutional the contentions of the government with regard to its scope cannot be accepted. The ownership of a commodity as described in the law applies only up to the time of transportation. If, before transporting the commodity, the railroad company has in good faith parted with the commodity, it may carry it. The ownership of stock in a different corporation which is producing the articles transported does not constitute ownership of the commodity which is prohibited under the terms of the law. The commodities clause only prohibits railroad companies engaged in interstate commerce from transporting in such commerce commodities under the following circumstances and conditions: (1) When the commodity has been manufactured, mined, or produced by a railway company or under its authority and at the time of transportation the railway company has not in good faith, before the act of transportation, parted with its interest in such commodity; (2) when the railroad company owns the commodity transported in whole or in part; (3) when the railroad company, at the time of transportation, has an interest direct or indirect, in a legal sense, in the commodity; which last prohibition does not apply to commodities manufactured, mined, produced, owned, etc., by a corporation because a railroad company is a stockholder in such corporation. Such ownership of stock in a producing company by a railroad company does not cause it as the owner of the stock to have a legal interest in the commodity

manufactured, etc., by the producing corporation. The act thus merely enforces a regulation of commerce by which carriers are compelled to dissociate themselves from the products which they carry and does not interfere to prohibit where the carrier is not associated with the commodity carried. The exemption as to timber, etc., contained in the clause is not repugnant to the constitution. In closing the court says:

As the court below held the statute wholly void for repugnancy to the Constitution, it follows from the views which we have expressed that the judgments and the decrees entered below must be reversed. As, however, it was conceded in the discussion at bar that in view of the public and private interests which were concerned, the United States did not seek to enforce the penalties of the statute, but commenced these proceedings with the object and purpose of settling the differences between it and the defendants, concerning the meaning of the commodities clause and the power of Congress to enact it as correctly interpreted, and upon this view the proceedings were heard below by submission upon the pleadings, we are of opinion that the ends of justice will be subserved, not by reversing and remanding with particular directions as to each of the defendants, but by reversing and remanding with directions for such further proceedings as may be necessary to apply and enforce the statute as we have interpreted it.